



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154065

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 14, 2014, at Milwaukee, Wisconsin.

NOTE: The record was held open to allow the parties to submit additional documentation. The agency submitted a copy of one page of Petitioner's lease. It has been marked as Exhibit 4. Petitioner submitted a three page packet that included: 1) a cover letter, 2) a page with a portion of her lease, a portion of an AT&T auto pay showing a [REDACTED] F at a [REDACTED] address, and a portion of a State Farm bill for [REDACTED] F at the [REDACTED] address and 3) a letter sent from Petitioner to a "[REDACTED]". Petitioner's packet has been marked as Exhibit 5.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined the Petitioner was overpaid FoodShare benefits between July 2, 2013 and December 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katherine May, HSPC Senior; Adekunle Fajembola, Income Maintenance
Advanced

Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 10, 2013, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim [REDACTED], indicating Petitioner was over-issued FoodShare benefits in the amount of \$2,378.00 for the period of July 2, 2013 and December 31, 2013. (Exhibit 3, pgs. 45-50)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 12, 2013. (Exhibit 1)
4. Petitioner completed an on-line Access application for FoodShare benefits on July 2, 2013, and reported no income. She also reported four people in her household, herself, and three children ages 18, 6 and 4. (Exhibit 3, pgs. 2-8)
5. There are no elderly, blind or disabled members in Petitioner's household. (Testimony of Petitioner)
6. In July 2013 and for most of August 2013, Petitioner's assistance group size was four and consisted of the Petitioner and her three children. On or about August 27, 2013, Petitioner's oldest child moved into a dormitory to attend college at [REDACTED]. (Testimony of Petitioner; Exhibit 3, pgs. 2 and 41)
7. Petitioner pays rent in the amount of \$819.00 per month. A [REDACTED] F. is listed as a co-signer on the lease. (Testimony of Petitioner; Exhibit 5; see also Exhibit 4)
8. Petitioner is responsible for paying utilities. (Id.)
9. Petitioner worked for American Income Life Insurance Company as an independent contractor from September 4, 2013 to September 16, 2013 and received a total of \$382.00 during that time. (Testimony of Petitioner; Exhibit 2, pg. 2; Exhibit 3, pg. 48)
10. Petitioner worked for [REDACTED], a temporary agency from September 27, 2013 to November 19, 2013. (Testimony of Petitioner; Exhibit 3, pgs. 7 & 8)
11. Petitioner received the following paychecks from [REDACTED] on the following dates:

10/4 \$97.50	11/1 \$513.50
10/11 \$520.00	11/8 \$416.00
10/18 \$520.00	11/22 \$260.00
10/25 \$520.00	

(Testimony of Petitioner; Exhibit 3, pg. 8)
12. Petitioner began working for Western and Southern Life Insurance on November 11, 2013 and continues to be employed by them. (Testimony of Petitioner; Exhibit 2, pg. 6)
13. Petitioner received the following paychecks from Western and Southern on the following dates:

11/29 \$1350
12/13 \$1400
12/27 \$1450

(Testimony of Petitioner; Exhibit 3, pg. 81)

DISCUSSION

Federal law generally requires that all FS overpayments be recovered. Those regulations provide, in relevant part, as follows:

Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State

Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18(a); also see FoodShare Wisconsin Handbook (FSH) § 7.3.1.1.

The overissuance can be caused by an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). *7 C.F.R. § 273.18(b)*, emphasis added; see also *FoodShare Wisconsin Handbook, App. § 7.3.2.1*. As such, it does not matter whose error caused the overpayment; it must be recouped.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of prove, by a preponderance of the credible evidence, that it correctly determined that an overpayment occurred and that it correctly calculated the overpayment.

As there is no evidence to indicate that Petitioner’s household included an elderly, blind or disabled (EBD) member, her obligation to report changes is dictated by section 6.1.1.2 of the Food Share Wisconsin Handbook:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household’s which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...

FSH, §6.1.1.2. Emphasis added

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.” *7 C.F.R. § 273.12(a)(vii)*; (emphasis added.)

Any overpayments caused by a failure to timely report a change are to be calculated in part, as follows:

7.3.2.1 Client and Non-client Error

Consider the [FS](#) group’s reporting requirements when calculating the overissuance. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

...

FSH, §7.3.2.1; emphasis added.

In the case at hand, the agency asserts that an overpayment of benefits occurred between July 2, 2013 and December 31, 2013, because the Petitioner failed to report a change in her household composition and because failed to report an increase in her household income.

With regard to household composition, per FSH §6.1.1.2, above, Petitioner was not obligated to immediately report the change in household composition due to reduced reporting requirements described in FSH §6.1.1.2, above. As such, the change in household composition that occurred almost two months after Petitioner submitted her application for benefits, cannot be used as basis for finding an overpayment in this case.

It should be noted that there was also no overpayment of benefits that occurred in July and August 2013, because:

1. There was no change in Petitioner's income in those months.
2. Petitioner's daughter was still in the home in July 2013, and
3. Even if Petitioner's had reported her daughter out of the home on August 27, 2013 (even though she wasn't required to do so) the agency would still have had to give Petitioner 10 days notice of any adverse action, per FSH §6.3.1. So, Petitioner's August benefits would not have been affected, either.

Petitioner obtained employment and began earning income in September 2013. However, Petitioner's income for the month of September totaled \$382.00. (See Exhibit 3, pg. 1) 130% of FPL for a household of 3 in September 2013 was \$2069. Because Petitioner's income of \$382, was below 130% of FPL, she was not obligated to report this change in income, per FSH §6.1.1.2. Because Petitioner was not obligated to report that income, it cannot be used as a basis to calculate an overpayment. *See FSH §7.3.2.1* As such, no overpayment of benefits occurred in September 2013.

In October 2013, Petitioner took a new job with [REDACTED]. However, the four checks she received that month totaled \$1657.50:

10/4/13	\$97.50
10/11/13	\$520.00
10/18/13	\$520.00
10/25/13	\$520.00

Total: \$1657.50

(Exhibit 3, pg. 8)

Because Petitioner's income of \$1657.50 did not put her over the \$2069, 130% FPL threshold, she was not obligated to report that income. Per FSH, §6.1.1.2 and §7.3.2.1, no overpayment of benefits occurred in October 2013.

In November 2013, Petitioner's income went up again, because she took, yet another job. Petitioner received the following checks from [REDACTED] and Western and Southern Life Insurance:

11/1/13	\$513.50
11/8/13	\$416.00
11/22/13	\$260.00
11/29/13	\$1350.00

Total: \$2539.50

In November 2013, the Federal Poverty Limits changed. At that time, 130% of FPL for a household of three was \$2116. Petitioner's income of \$2539.50 exceeded the 130% FPL threshold. As such, she was obligated to report that increase in income. However, per FSH, §6.1.1.2, she was not obligated to report this change in income until December 10, 2013. Consequently, there was no overpayment of benefits for November 2013.

Had Petitioner timely reported the change by December 10, 2013, the change would not have affected Petitioner's benefits until January 2014, because the agency would still have had to give 10 days notice of any adverse action and because FoodShare benefits are issued on a calendar month bases. *See FSH §§6.3.1 and 3.4.1.* As such, there was no overpayment of benefits for December 2013, either.

CONCLUSIONS OF LAW

The agency incorrectly determined that the Petitioner was overissued FoodShare benefits between July 2, 2013 and December 31, 2013.

THEREFORE, it is

ORDERED

That the agency rescind claim number [REDACTED] and that it cease all collection efforts. The agency shall take all administrative steps necessary to complete these tasks within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

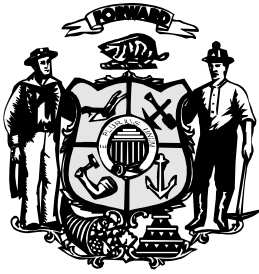
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of January, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 30, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability